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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,010	12/20/2000	Steven L. Schmidt	08500-7245-00000	7405

22852 7590 04/11/2002

FINNEGAN, HENDERSON, FARABOW, GARRETT &  
DUNNER LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

RECEIVED

APR 17 2002

FINNEGAN, HENDERSON,  
FARABOW, GARRETT & DUNNER, LLP.

EXAMINER

DYE, RENA

ART UNIT

PAPER NUMBER

2167

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Docketed 04/12/02 Attorney LMO/TAH  
Case 08500-7245

Due Date 07/11/02 W/EXT

1st RESPONSE DUE

QD

ZT  
4-11-02

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/745,010	SCHMIDT ET AL.
	Examiner Rena L. Dye	Art Unit 2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 20 December 2000.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1,18 and 19, the term "solid-stated polyamide" is vague and not well understood. Clarification is requested.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1-9,13-15,18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kim et al. US 6,239,210 B1.

Kim et al. teaches a package having a wall wherein the wall comprises at least one oxygen scavenging layer of a blend of MXD6 nylon and a cobalt up to 250 ppm (column 3, line 66 to column 4, line 18). Structures can include blends of PET/MXD6/Cobalt octoate or MXD6/Cobalt octoate (column 4, lines 32-36). The oxygen barrier and oxygen absorbing composition can be formed into multiple layer structures. These multiple layer structures have a

core layer of either a MXD6 nylon/cobalt octoate blend or a MXD6 nylon/polyester/cobalt octoate blend disposed between two adjacent layers. The two adjacent layers are comprised of either a polyester or a polyamide. Also, one adjacent layer can be a polyester and the other adjacent layer can be a polyamide. The polyester can be a PET and the polyamide is nylon 6 (column 4, line 50 to column 5, line 2). Tables 1,2 and 3 disclose haze values of less than 10%.

Kim further teaches the composition having superior oxygen barrier and oxygen absorption characteristics. This composition may be employed as a mono or multilayer film such as, for example, in a pouch or flexible lidstock compositions may also be formed into rigid containers or may comprise the sidewall, body, lid or entire container (column 7, line 63 to column 8, line 4). The blends can be biaxially oriented (column 6, lines 20-24; column 8, line 33-37). The disclosed invention provides a solution to the problems of color and haze by using the extrusion blow-molding process (column 8, lines 58-60).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10,11,12,16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. US 6,239,210 B1.

With respect to claims 10 and 12, in the "Background of the Invention" Kim et al. teaches packaging of aqueous liquids such as beer (columns 1-2). Although Kim does not expressly teach that the disclosed packaging film is used for beer, it is strongly suggested that the

packaging film, being superior in barrier property, would be used for packaging aqueous liquid such as beer. Therefore, it would have been obvious to one having ordinary skill in the art to have used the disclosed blend/multilayer material in packaging aqueous liquids such as beer.

With respect to claim 11, Kim does not specifically teach that the package includes at least a portion having two oxygen-scavenging layers positioned between three adjacent polymers layers. It would have been obvious to one having ordinary skill in the art to have added additional buried or sandwiched oxygen-scavenging layers to have increased the overall barrier property of the package and the shelf life of the product contained within the packaging.

With respect to claims 16-17, Kim et al. does not teach the oxygen scavenging layer containing more than 250 ppm. It would have been obvious to one having ordinary skill in the art to have used a greater amount of the oxygen scavenger in an environment where greater absorbance of oxygen is needed.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rena L. Dye whose telephone number is 703-308-4331. The examiner can normally be reached on Monday -Thursday 8:30 AM - 7:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703-308-5183. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Art Unit: 2167

6. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Rena L. Dye  
Primary Examiner  
Art Unit 2167

R. Dye  
April 5, 2002

**Notice of References Cited**

Application/Control No.

09/745,010

Applicant(s)/Patent Under

Reexamination

SCHMIDT ET AL.

Examiner

Rena L. Dye

Art Unit

2167

Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,159,005	10-1992	Frandsen et al.	524/403
	B	US-5,281,360	01-1994	Hong et al.	252/188.28
	C	US-5,776,361	07-1998	Katsumoto et al.	252/188.28
	D	US-5,660,761	08-1997	Katsumoto et al.	252/188.28
	E	US-5,866,649	02-1999	Hong et al.	215/10
	F	US-6,239,210	05-2001	Kim et al.	215/12.1
	G	US-6,365,247	04-2002	Cahill et al.	428/35.7
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)

Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

FORM PTO-1449(Modified)

ATTY. DOCKET NO. C0762/7237

SERIAL NO. 09/236,498

LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT'S  
INFORMATION DISCLOSURE STATEMENT

APPLICANT Schmidt et al.

FILING DATE January 26, 1999

GROUP 3727

## U.S. PATENT DOCUMENTS

Exam Init	Ref Des	Document No.	Date	Name	Class	Sub Class	FILING DATE If Appropriate

## FOREIGN PATENT DOCUMENTS

		Doc. No. (11)	Pub. Date (43)	Country	Class	Sub Class	Translation Yes No
		WO 94/09069	28.04.94	PCT			
		JP 1272660 A	31.10.89	Japan (Abstract)			

OTHER ART  
(Including Author, Title, Date, Pertinent Pages, Publication, Etc.)


\* a copy of this reference is not provided as it was previously cited by or submitted to the office in a prior application, Serial No. \_\_\_\_\_, filed \_\_\_\_\_, and relied upon for an earlier filing date under 35 U.S.C. 120 (continuation, continuation-in-part, and divisional applications).

EXAMINER	DATE CONSIDERED
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EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered.  
Include copy of this form with next communication to applicant